

Fee Cap Policy (Limitations of Fee Payments to Outside Counsel)

This statement sets forth the policy and procedures of the FDIC Legal Division to limit generally the payment of fees to any particular Outside Counsel under consideration for engagement, while at the same time ensuring quality, cost-effective representation of the FDIC.

Policy Objective

It is the objective of the Legal Division always to retain well-qualified, ethical Outside Counsel to provide legal services to the FDIC. The Division expects to obtain efficient and economical legal services from its Outside Counsel, and to benefit from enhanced competition among firms. The Division seeks to avoid unwarranted concentrations of legal referrals. Certain firms, however, may be better able than others because of their experience to offer special or unique expertise. Under those circumstances, the Division reasonably may anticipate savings and other benefits from engaging such firms.

Approvals Required

In deciding which firms to engage, it is the expectation of the Division that, under most circumstances, referrals of new matters should not be made to any law firm (including all offices of multi-office firms) that has received, during the previous four calendar quarters, aggregate legal fees (exclusive of expenses) from the BIF, FRF, SAIF and RTC funds. This includes payments made through asset servicers, conservatorships, and bridge banks, in excess of:

- \$2.5 million (but less than \$5 million) without the prior written approval of a Deputy General Counsel or Regional Counsel
- \$5 million (but less than \$7.5 million) without the prior written approval of a Deputy General Counsel
- \$7.5 million without the prior written approval of the General Counsel.

Fee Information Reports

The Division's Outside Counsel Section (OCS) will prepare and distribute, throughout the Division, quarterly reports concerning the amount of fees paid to Outside Counsel during the previous four calendar quarters. Legal Division personnel shall not refer new matters to any firm that, according to the most recent quarterly report, received aggregate fee payments in excess of the levels shown above, except with the indicated approvals.

Criteria for Approvals

Criteria to be considered for approving referrals of new matters include, but are not limited to, the following:

- special expertise or experience in complex, factually, or legally similar matters
- justifiable expectation of substantially reduced fees (reflecting lower rates or less time) compared with other available firms
- reasonable expectation of substantially better or enhanced legal services and advice
- demonstrated greater experience in dealing with the Division's "special issues" or other sensitive matters
- promotion of the Division's minority and women outreach program
- exigent circumstances.

Documentation

All requests for waivers shall be made in writing with a copy forwarded promptly to OCS by the requestor. All approvals shall set forth, in reasonable detail, the justification for the approval. Reviewing officials within the Legal Division shall promptly transmit a copy of each request for a waiver, reflecting final action, to OCS.

FRF Payments to Acquirers under FSLIC Assistance Agreements

Legal fees reimbursed by the FRF to acquirers under FSLIC Assistance Agreements are not considered in “fee cap” calculations. The primary reason for their exclusion is the lack of privity of contract between the Division and the pertinent Outside Counsel. Moreover, these costs are not budgeted by the Division as legal fees, but are budgeted and paid by the Division of Resolutions, as an element of expense under the assistance agreements. However, legal fees incurred directly on behalf of the FRF (e.g., for representation of the FRF in legal proceedings initiated by assisted acquirers) shall be subject to this statement.